

SETTING THE RECORD STRAIGHT: H.R. 1461's AFFORDABLE HOUSING FUND

Slush Fund/"Political Honey Pot"

Opponents of the Affordable Housing Fund have tried to paint the Fund as a "political slush fund." Clearly they have not read the legislation for it ensures precisely the opposite – and makes that point clear in no less than 15 different ways. I draw your attention to the following:

Limitations on Fund Uses

- H.R. 1461 provides that the affordable housing funds may be used, or committed for use, only for "eligible activities" selected for funding "in accordance with the process and criteria established" by regulation. Eligible activities include only assistance for the "production, preservation and rehabilitation" of housing and a subset (no more than 12.5 percent) "public infrastructure development activities" connected with that housing. Political advocacy, civil disobedience and the like obviously do not qualify. *Section 128(c)*.
- The bill *requires* the regulator to promulgate regulations "set[ting] forth prohibited uses of amounts from the affordable housing fund... which shall include use for – (i) political activities; (ii) advocacy; (iii) lobbying, whether directly or through other parties; (iv) counseling services; (v) travel expenses; and (vi) preparing and providing advice on tax returns." *Section 128(f)(6)(A)*
- The bill also provides that the amounts allocated "may not used for administrative outreach, or other costs of – (i) the enterprise; or (ii) any recipient of amounts from the affordable housing fund. *Section 128(f)(6)(B)*.

H.R. 1461 requires that the regulator establish such selection criteria to ensure that fund allocation is based "upon *specific criteria*, including a prioritization of funding based upon natural disaster areas, and areas of greatest impact; geographic diversity; and ability to obligate amounts and undertake activities ... in a timely manner." *Section 128(k)(2)(C)*.

- The bill prohibits the enterprises from requiring (or even giving preference to) selections that involve enterprise financing or underwriting. *Section 128(k)(2)(C)(ii)*.

Limitations on Recipients

- Affordable housing funds may go only to eligible recipients that "(A) have a demonstrated capacity for carrying out [these, above listed] activities; and (B) make such assurances ... as the Director shall, by regulation, require to ensure that the recipient will comply with the requirements of this section." *Section 128(e)*.
- Funds awarded "to a national nonprofit housing intermediary [may] not [be] redistributed to other nonprofit entities." *Section 128(f)(8)*.

Post-Grant Review

- Each GSE must develop a system to track the use of funds "to ensure that each recipient...uses such amounts in accordance with [the statute], the regulations issued [there under], and any [additional] requirements or conditions under which the amounts were provided. *Section 128(g)(1)(A)(i)*

- The regulator must “establish minimum requirements for agreements, between the enterprises and recipients, regarding grants from the affordable housing funds, [including]” – (I) ongoing financial and project reporting, record retention and audit requirements; and (II) “any other requirements that the Director determines are necessary to ensure appropriate grant administration and compliance.” *Section 128(g)(1)(A)(ii) (emphasis added).*
- The bill establishes independent third-party oversight of fund allocations by requiring regular reporting of fund disbursements, establishing an affordable housing board (independent of the GSEs) to review disbursements and making disbursement reports publicly available (and therefore subject to public scrutiny). *Section 128(j).*
- The bill requires the enterprises to submit quarterly reports to the Director *and* third-party oversight board “describing the activities funded” during that quarter. The oversight board shall “review each report...to determine the consistency of such activities funded with the criteria” established by regulation.” *Section 128(g)(2).*

The bill would require that the affordable housing fund be audited “not less than annually” to ensure compliance. 128(k)(2)(B).

Misuse

- If a recipient misuses funds, the recipient shall be banned in perpetuity from receiving these funds and “the enterprise shall require the recipient to reimburse the enterprise for such misused amounts [and return any unused amounts.]” *Section 128(g)(1)(B).*
- If an enterprise funds an activity that is not consistent with the criteria established by the Director, the enterprise must replenish the fund. *Section 128(g)(2).*
- Finally, if the Director finds that the funds have been misappropriated, the regulator can take a range of enforcement or remedial measures from ordering the replenishment of the fund to revising the selection criteria to taking enforcement action for violating the Act. (*See Sections 128(k)(2)(E); 128(g)(1)(B).*)

The RSC’s Unconstitutional Requirements on Nonprofit Entities

In addition to these 15 protections, some are seeking to impose unconstitutional restrictions on the ability of non-profit recipients to *affiliate* with other entities that engage *with their own funds* in voter registration activities. This addition is terrible public policy aimed entirely at punishing non-profit entities and forcing organizations to choose between funds for low income housing and engaging in voter registration efforts, even though such efforts may be required in some states to qualify for state housing grants. Note that this effort relates *only* to nonprofit recipients and *bans even non-partisan voter registration and voting activities*. The RSC purposefully DOES NOT apply these restrictions to for-profit recipients, or their political contributions and other activities.

A Note on the White House’s Faith-Based Initiative

Over the last few years, the Bush Administration has proposed making it easier for faith-based organizations to use federal funds to build affordable housing; proposed a multi-billion single family tax credit to enable homebuilders to build homes for low-income families; and pushed through Congress its American Dream Downpayment Act, which provides funds to states and localities to provide downpayment

homeownership assistance to low-income families. These are the very same types of activities and entities that are eligible under the affordable housing fund, the very same types of uses that fund opponents characterize as a “slush fund” for “liberal interest groups.”

The approach used in this legislation has a proven prototype: the Affordable Housing Program of the Federal Home Loan Bank system (AHP) established by Congress in 1989. The Affordable Housing Fund envisioned in H.R. 1461 is designed to mirror the AHP and the widely acknowledged success of that program makes it clear that these types of arguments are worth having. It is interesting to note that critics of the AHP raised the same types of arguments in 1989 that critics are raising now. But after 16 years, none of the predicted abuses have occurred, and the AHP is widely embraced by Republican and Democrat, private mortgage lender and housing advocate, alike. The Committee intends to build on proven success.

Opposition to the Affordable Housing Fund represents nothing other than mean-spirited, ideological opposition to doing anything to help those poorest among us who cannot even find a decent place to live. Unlike the bill, that bias does not have strong bipartisan support.

Safety and Soundness Concerns

Some opponents have also implied that the fund might create some safety and soundness problems for the GSEs. This too is incorrect: The bill clearly states that the enterprises “shall not be required to make an allocation for a year to the affordable housing fund ... unless the enterprise generated after-tax income for the preceding year.” In addition, “[t]he Director shall temporarily suspend the allocation [to the fund if the Director finds] that such allocations” – (A) would contribute to the financial instability of the enterprise; (B) would cause the enterprise to be classified as undercapitalized; (C) would prevent the enterprise from successfully completing a capital restoration plan. *Section 128(b)(2)*.